

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SMITHKLINE BEECHAM)
CORPORATION d/b/a)
GLAXOSMITHKLINE,)
)
Plaintiff,)
)
v.)
)
BARR PHARMACEUTICALS, INC. and) C.A. No. 08-CV-112 (SLR)
BARR LABORATORIES, INC.,)
) <u>JURY TRIAL DEMANDED</u>
Defendants.)
)
)
)
)
)

**DEFENDANT BARR PHARMACEUTICALS, INC.'S
MOTION TO DISMISS THE COMPLAINT AGAINST IT**

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Attorneys for Defendants

Defendant Barr Pharmaceuticals, Inc., pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby moves this Court to dismiss the Complaint against it for failure to state a claim. In support of its motion, Barr Pharmaceuticals refers the Court to the brief in support of the motion and the following summary statements:

1. This is an ANDA patent infringement litigation. The only alleged act of patent "infringement," pursuant to § 271(e)(2) of the Patent Act, is the artificial act of submitting an ANDA document to the FDA.
2. The only party who has submitted an ANDA document to the FDA, as stated on the face of Plaintiffs' own Complaint, is Barr Laboratories, a co-defendant already named in this litigation.
3. The separate company Barr Pharmaceuticals, however, did not submit an ANDA. Barr Pharmaceuticals has not committed even the artificial act of infringement of an ANDA filing, and there is no other factual basis (and none alleged in the Complaint) to hold Barr Pharmaceuticals liable for patent infringement.

WHEREFORE, this Court should grant Barr Pharmaceuticals' motion to dismiss the complaint against it, and grant other such relief that the Court deems just and proper.

Dated: March 17, 2008

Respectfully submitted,

By: /s/ John C. Phillips, Jr.
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ORDER

AND NOW, this _____ day of _____, 2008, upon
consideration of Defendant Barr Pharmaceuticals, Inc.'s Motion to Dismiss the
Complaint Against It (the "Defendant's Motion"), and any response thereto;

IT IS HEREBY ORDERED that Defendant's Motion is GRANTED.

IT IS HEREBY FURTHER ORDERED that Defendant Barr Pharmaceuticals,
Inc. is hereby dismissed with prejudice from the above action.

The Honorable Sue L. Robinson